

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE)
MICHAEL S. HELMSTETTER,) Case No. 19-28687
Debtor.) Chapter 7
) Hon. Jacqueline P. Cox

Objection to Chapter 7 Trustee's Motion for Approval of Settlement of Disputes With Kingdom Chevrolet, Inc., and Richard Ruscitti and Transfer of At Least 33% of Shares of Stock of Kingdom Chevrolet Inc., 25% of Shares of South Chicago Nissan d/b/a Western Avenue Nissan to Kingdom Chevrolet, Inc And to Limit Notice to Twenty Largest Creditors

Now comes Michael Helmstetter, Debtor, by and through his attorney Richard L. Hirsh and in support of his Objection to Trustee's Motion for Approval of Settlement of Disputes With Kingdom Chevrolet, Inc., and Richard Ruscitti and Transfer of At Least 33% of Shares of Stock of Kingdom Chevrolet Inc., 25% of Shares of South Chicago Nissan d/b/a Western Avenue Nissan to Kingdom Chevrolet, Inc And to Limit Notice to Twenty Largest Creditors states as follows:

1. Upon information and belief, the subject Settlement of Disputes proposed by the Trustee appears to have been made prior to the Trustee having adequate prior access to information and expert opinion to more accurately evaluate as follows:
 - a. The true, accurate and appropriate valuation of Debtor's available and viable assets, which can be used not only to pay off Creditors in full but also to fund a very likely excess amount to return to Debtor.
 - b. Debtor has engaged separate counsel, Nicola S. Tancredi, Oakbrook Terrace, IL, to analyze numerous causes of action which Debtor has scheduled in his recently filed Amended Schedules. Debtor has listed in Schedule B about 30 claims he has against various third parties. Those claims are summarized in what

was filed with the court as an exhibit to the schedules and is attached hereto as Exhibit A.

c. The viability of these claims was examined by Attorney Tancredi who is an experienced commercial litigator, highly experienced in the areas of fraud and related litigation. From 1981 – 1992, Attorney Tancredi focused on fraud and financial crimes, for both the Department of Defense and the US Army working with the Criminal and Civil Divisions of the Department of Justice, U.S. Attorneys throughout the country and the Departments of State and Treasury. Since 1992 in the private sector, Attorney Tancredi, both as an attorney and fraud examiner, has successfully executed recovery operations for corporations such as Sears Roebuck and Co., Walmart, Walgreens, the Gap, Michaels and YRC Worldwide. His cv is attached as Ex. D.

d. Attached as Exhibit A hereto is what has been filed as an exhibit to the amended schedules identifying the third-parties, setting forth a brief description of the claims as well as the potential value of these claims.

e. Mr. Tancredi was assisted in this analysis by Paul Rodrigues, Chairman of the Forensic Accounting Practice, and Deborah Temkin, Director, The BERO Group – Waukesha, WI and Chicago, IL. These forensic accountants have determined that the claims could be worth as much as \$59,000,000.

f. The claims bar date having passed, only 23 claims have been filed and they total about \$20,000,000.

g. There exists the potential of recovering sufficient assets to pay all administrative claims, priority claims and general unsecured claims in full and generating a surplus for the Debtor.

2. Turning to the instant motion which seeks approval to settle Debtor's claims Richard Ruscitti relative to Debtor's prepetition ownership of interests in Kingdom Chevrolet, Inc., and South Chicago Nissan Inc., d/b/a Western Avenue Nissan. Debtor objects to the settlement in the amount of \$550,000.00.

3. As related by the Trustee, this claim has been languishing in the Circuit Court of Cook County and it appears little traction was gained there. Attorney Tancredi, has assembled an experienced commercial litigation team; including both litigators and the BERO Group, CPAs and forensic accountants – a well-established leading and respected group of experts in commercial fraud and irregularities.

4. Attorney Tancredi has requested permission from or engagement by the Trustee to pursue the instant Ruscitti claim – and also is prepared to undertake representation of the Trustee with regard to the other claims on the attached Exhibit A. With the knowledge and consent of the Trustee, he is currently representing one of Debtor's dealerships New City Historic Auto Row, LLC in FCA US LLC v. Santander Bank, N.A., et al. US District Court for the Northern District of Illinois, No. 19 cv 001516.

5. The Trustee has cited the correct criteria for approval of the settlement. However, based on what is being presented with this objection, Debtor respectfully submits that the settlement amount is far below what can be considered as either a reasonable litigation outcome, or commercially reasonable settlement, etc.

6. The proposed settlement, after and payment of administrative priority claims, will not fund any recovery for the remaining priority and general unsecured creditors in any event.

7. Mr. Tancredi and his litigation team have taken many steps to enable them to successfully litigate this claim.

8. At least 4 applications for Litigation Financing are currently pending. If this financing is obtained, it may be used in a variety of ways, including, but not limited to, paying litigation expenses of the estate, and mitigating the risk of not accepting the \$550,000 settlement offer pending – whether by way of escrow, insurance or surety bond and even financing further collection efforts. Attorney Tancredi would be the borrower and it is non-recourse in any event. These funds are more in the nature of an investment by the litigation lenders.

9. The litigation team working with the BERO Group has conducted thorough research of public records to reasonably conclude that sufficient assets exist to allow millions of dollars of claims to be recovered.

a. A claim against Richard Ruscitti, Kingdom Chevrolet and Western Avenue Nissan for \$16 million is demonstrable. There are sufficient objective facts based on financial records and documents produced to date to indicate that this claim can be filed immediately, and that additional discovery is limited enough to allow for an expeditious finalization of facts and economic damages.

b. This claim includes but is not limited to:

i) An estimated \$8.6M representing Helmstetter's share of the Fair Market Value of Kingdom Chevrolet and Western Avenue Nissan;

- ii) An estimated \$2.2 million in unpaid salary and bonuses due to Helmstetter by Kingdom Chevrolet and Western Avenue Nissan;
- iii) An estimated \$4.7 million in unpaid dividends due to Helmstetter by Kingdom Chevrolet and Western Avenue Nissan;
- iv) An estimated \$1.5 million representing Helmstetter's share of excess executive compensation drawn by Ruscitti, excess rent and what appear to be falsified mortgage payments made by Ruscitti using dealership monies.
- v) Helmstetter's share of the Reinsurance Business entered into with CNA, Alpha and any other reinsurance companies, to be determined and believed to be significant.

10. Attached as Exhibit B and C are The BERO Group's preliminary assessment of the claims against Ruscitti, Western Avenue Nissan and Kingdom Chevrolet for which the Trustee seeks approval. These analyses are supported by volumes of documents, which are not attached but which can be produced and which will be produced with the forthcoming amended Rule 2004 document production as well. Some or all may have been produced by Debtor's prior counsel.

11. Attached as Exhibit D is the CV of Nicola Tancredi, demonstrating his credibility and experience in commercial litigation, fraud recovery and many other areas. Notably, he holds a Masters Degree in Taxation as well.

12. The total possible recovery just from the claims Trustee seeks to settle will not generate a settlement sufficient to generate a surplus case. However, all of the other claims listed in Exhibit A have the potential of generating a surplus if properly litigated

or aggressively settled. Under these circumstances, this Objection should be considered and sustained.

Wherefore Debtor, Michael Helmstetter respectfully urges this Court to sustain this Objection and to deny the Trustee's Motion to Approve the Settlement and for such other relief as appropriate.

Respectfully submitted,

MICHAEL S. HELMSTETTER

By: /s/Richard L. Hirsh
His Attorney

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